IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10746 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VASTRAJI ALIAS GOP SOMAJI MARVADI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10746 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MS HB PUNANI, LD. AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 27/12/2004

ORAL JUDGEMENT

Heard Ms.Subhadra Patel, learned counsel appearing for the petitioner and Ms.H.B. Punani, ld.AGP,

appearing on behalf of the respondents. The reply affidavit filed by the respondent no.2 tendered by today Ms.Punani, is taken on record.

2. The present petition is filed under Article 226 r/w. Articles 21 and 22(5) of the Constitution of India. The petitioner has challenged legality and validity of the order of detention dated 24th June, 2004, passed by the Commissioner of Police, Ahmedabad City, under the purported exercise of powers vested with the Detaining Authority under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act').

3. The petitioner is branded as a "bootlegger" within the meaning of Section 2(b) of the Act, as he was found involved in four offences registered under the Bombay Prohibition Act. While exercising powers under Section 3(2) of the Act, the Detaining Authority has detained the petitioner branding the petitioner as a "bootlegger" mainly on the fact that he was found involved in four different offences punishable under the Bombay Prohibition Act within a span of three months i.e. between 11th March, 2004 to 2nd June, 2004. On all the four occasions, the petitioner was found involved in dealing with the country liquor and, therefore, it is recorded that the activities of the petitioner are prejudicial to the maintenance of public order and public health. The details of all the four offences registered by the Prohibition Police Station, South Zone, Ahmedabad City, have been given in a tabular form in the grounds for detention conveyed to the petitioner-detenu, when the impugned order was executed. So it can be inferred that the area of operation of the petitioner is also same i.e. within the territory of one Prohibition Police Station.

4. The order of detention is assailed by the present petitioner on various grounds mentioned in the memo of the petition. However, Ms.Patel has focused her arguments mainly on the ground that except registration of four criminal offences punishable under the Bombay Prohibition Act, there was no other material before the Detaining Authority whereby it could be inferred reasonably that the petitioner is a bootlegger within the meaning of Section 2(b) of the Act and therefore, he is required to be detained as his activities are prejudicial to the maintenance of public order and public health at large. In support of her this submission, Ms. Patel has placed reliance on relevant observations made by the Apex Court in the case of Kanuji S. Zala v. State of Gujarat and ors., reported in 2000(4) GLR 3256 (re.para:4,5 & 6), which would squarely help the present petitioner.

5. In this cited decision, the order passed by the District Magistrate and Detaining Authority was confirmed as the Apex Court was satisfied to reach to a conclusion that the Detaining Authority was right in arriving at the conclusion that the activities of the petitioner were prejudicial to the maintenance of public order and the grounds recorded by the authority were found genuine and reasonable by the Apex Court. But according to Ms.Patel, in absence of any statement from the witnesses from the public against the conduct of the petitioner-detenu or expressing grievance against the bootlegging activities of the present petitioner by which it can be inferred that the activities of the petitioner are serious threat to the public order as well as public health at large, the impugned order ought not have been passed. This Court (Coram : A.L. Dave, J) in the case of Babuji Jaksiji Thakore v. State of Gujarat, while dealing with Special Civil Application No.143 of 2002, decided on 14th February, 2002, has held that the activities of the petitioner-detenu cannot be said to be disturbing the public order because the only material against the petitioner-detenu was of registration of prohibition cases and the papers of those cases were also not able to indicate that the activities were able to disturb the maintenance of public order and public health. It is observed by the Court in this decision in para:5, in absence of any statement from any witnesses that "In absence of any material to indicate that the satisfaction recorded by the detaining authority for the need for exercise of powers under Section 3 of the PASA Act was genuine, the order cannot stand". In the same way, this Court (Coram :N.G.Nandi, J) while dealing with Special Civil Application No.16542 of 2003, in the case of Gunvantbhai @ Chiga Ranchhod Halpati v. State of Gujarat, decided on 26th February, 2004, has noticed that, "In the instant case, except the statement in Ground No.3 as referred to above, there is no credible material before the detaining authority on the basis of which a reasonable inference can be drawn as regards the adverse effect of the bootlegging activity of the detenu on the maintenance of public order." In this decision, the petitioner was found involved in two different cases punishable under the Bombay Prohibition Act. It is submitted by learned counsel appearing for the petitioner that no formal statements of witnesses were available before the Detaining Authority when the subjective satisfaction was recorded. Similarly, this Court (Coram :D.P.Buch,J) while dealing with Special Civil Application No.16409 of 2003 in the case of Ilyasbhai @ Munno @ Mashero Ibrahim Vohra v. State of Gujarat, decided on

10th March, 2004, has quashed and set aside the order of detention, wherein the petitioner was found involved in five prohibition offences registered against him with Anand Police Station, Borsad Police Station, Bhadran Police Station, etc. in the same district between 22nd March, 2003 and 9th September, 2003. In the cited decision, the petitioner was found dealing with illicit foreign liquor without any pass or permit. By referring to the decision in the case of Gunvantbhai (supra), the Court has observed that :

> "4. In LPA No.223 of 2000 in Special Civil Application No.554 of 20000, this Court had an occasion to come across a similar case in which the petitioner was detained on account of registration of prohibition case against him. This Court had considered the pros and cons of the said matter and came to the decision that there was no credible material before the detaining authority in order to show that the alleged bootlegging activities of the petitioner resulted in public disorder or cause harm to the public health at large. Learned Advocate for the petitioner has argued that if liquor would be sold to so many persons, health of public at large would be adversely affected. In fact, there was no reason for the detaining authority to come to a finding that the activities of the petitioner could be a challenge to the public health at large. It seems that before the detaining authority, there was no credible material to come to a finding that the bootlegging activity of the petitioner would adversely affect the public at large."

and ultimately it has been held in the said decision in para:5 that :

> ".... it cannot be said that the alleged bootlegging activities of the petitioner in indulging sale of foreign liquor even on large quantity basis, would tantamount to threat to public order at large."

6. In the present case, as there is no statement from the public, the registration of four offences itself has been incorrectly considered as an activity prejudicial to the maintenance of public order. So the arguments advanced by Ms.Patel shall have to be accepted

that in absence of any cogent evidence or material other than registration of criminal offence, the Detaining Authority ought not have recorded subjective satisfaction to the effect that the activity of the petitioner are prejudicial to the maintenance of public order and public health.

7. Of course, the learned counsel appearing for the petitioner has pressed into service one more ground that certain vital documents including the report of the FSL were demanded by the petitioner-detenu but the same were not supplied promptly. However, this ground or any other ground pressed into service is not required to be discussed as the impugned order is found unsustainable in view of the above discussion. So on the above grounds, the Court is accepting the say of the petitioner that the authority has committed grave error in recording subjective satisfaction that the activities of the petitioner are prejudicial to the maintenance of public order. Obviously, therefore, it was erroneous to exercise privilege vested with the authority under the Act. So without entering into the merits of other grounds, the order of detention is required to be quashed and set aside.

8. In view of the above, the present petition is hereby allowed. The order of detention dated 24th June, 2004, passed by the respondent no.2 herein is hereby quashed and set aside and the petitioner-detenu is hereby ordered to be set at liberty forthwith, if no longer required for any other case. Rule is made absolute with no order as to costs. Direct Service is permitted.

(C.K. Buch, J)

Aakar